

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

THOMAS E. MORIARTY,)	
)	Case No.
Plaintiff,)	
)	
vs.)	
)	COMPLAINT
PHILLIPS & COHEN)	AND
ASSOCIATES, LTD.,)	JURY DEMAND
)	
Defendant.)	

COMES NOW, the plaintiff, above-named, by and through his attorney, and alleges and states that this is an action brought by an individual consumer for the defendant's violations of the FAIR DEBT COLLECTION PRACTICES ACT, 15 U.S.C. § 1692 et seq. In support of his claims the plaintiff states and alleges the following:

JURISDICTION AND PARTIES

1. That subject matter jurisdiction of this Court arises under 15 U.S.C. § 1692k, actionable through 28 U.S.C. § 1331 and other provisions of the law.
2. That venue is proper in this court for the reason that the claims on which the transaction took place happened in this state.
3. That the plaintiff is a resident of Omaha, Douglas County, Nebraska.

4. That the defendant, Phillips & Cohen Associates, Ltd. is a debt collector and a corporation organized and existing under the law of the state of New Jersey and is doing business in the state of Nebraska, and elsewhere.

FACTUAL BACKGROUND

5. That Plaintiff received a series of pre-recorded voice mail messages from Phillips & Cohen, Assoc., LTD, the purpose of which was to attempt to collect an alleged debt for personal, household or family purposes.

6. That on or about August 6, 2004, the plaintiff's counsel verbally contacted the defendant in response to telephone calls to the plaintiff and notified defendant of her legal representation of Plaintiff and followed up with a letter to defendant which again informed Defendant of Plaintiffs representation by counsel and advising the defendant to cease and desist all further collection efforts and requesting the Defendant to validate the alleged debt.

7. On occasions after August 6, 2004 the defendant's collectors have contacted Mr. Moriarty directly.

8. That the defendant has failed to respond to the plaintiff's request to validate the alleged debt.

CAUSE OF ACTION **VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT**

9. That the plaintiff is a natural person and is a "consumer" within the meaning of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692(a)(3).

10. That the defendant is a collection agency with a location (collection operations) in Westampton, New Jersey, Newark, Delaware, and Plantation, Florida, all of which engage in the business of collecting debts and regularly attempt to collect debts alleged to be due another by use of the mail and telephone and as such is a "debt collector" within the meaning of 15 U.S.C. § 1692(a)(6).

11. That at all times relevant hereto the defendant was attempting to collect an alleged debt, alleged to be in default against the plaintiff for personal, family or household purposes.

12. That during the course of attempting to collect the alleged debt, defendant violated 15 U.S.C. § 1692g by failing to provide validation and verification of the alleged debt after properly being requested to do so in writing.

13. That during the course of attempting to collect the alleged debt, defendant violated 15 U.S.C. § 1692b and c by continuing to contact the plaintiff directly when it knew that the plaintiff was represented by counsel.

WHEREFORE, the plaintiff prays for a judgment against the defendant for statutory damages, actual damages, statutory attorney fees, the costs of this suit, and for such other and further relief as the court shall deem appropriate.

Dated: October 4, 2004

Thomas E. Moriarty,
Plaintiff,

By: /s/Pamela A. Car
Pamela A. Car, #18770
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Attorneys for the plaintiff

JURY DEMAND

The plaintiff demands a trial by jury as to all issues so triable in Omaha, Nebraska.

Thomas E. Moriarty,
Plaintiff,

By: /s/Pamela A. Car
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